

**Summary Minutes of the  
Delta Protection Commission  
Thursday, March 23, 2006**

**1. Call to Order/Flag Salute**

Chair McGowan called the meeting to order at 6:40 p.m.

**2. Roll Call**

**Present:** Chairman McGowan, Commissioners Beckman, Calone, Kelly, Morey, Perez, Reagan, Sanders, Scriven, Shaffer, Simonsen, van Loben Sels, and Wilson; and Roberta Goulart for Mary Piepho.

**Absent:** Commissioners Cabaldon, Ferguson, Johnson, Nottoli, Piepho and Ornellas.

**3. Public Comment**

Warren Smith, Alliance of Concerned Citizens for the Sacramento River Delta (Delta Alliance) said that the group was concerned the Commission has lost touch with its original mandate. He said the Commission must lean toward a broad interpretation of the Act to provide maximum protection of agricultural, recreation and environmental resources of the Delta. Mr. Smith also said that the Commission's visioning scenarios are unclear and the Commission should assume a strengthened role, involving some level of regulatory oversight to adequately protect the Delta.

Mr. Smith said the Delta Alliance proposes that the Commission develop a report that reviews the effectiveness of the Resource Management Plan and identifies land use changes and growth pressures within the Primary Zone; and growth pressures in the Secondary Zone that may affect the resources of the Primary Zone. Additionally, the report should quantify the rate, acreage, and location of agricultural land conversions and agricultural subdivisions in the Primary and Secondary Zones of the Delta since 1992.

**CONSENT AGENDA (Items 4-11) (Recommended for Approval)**

- 4.** APPROVE Minutes of Meetings of January 26, 2006, February 2, 2006 and March 2, 2006.
- 5.** AUTHORIZE chair to Execute Letter from the Commission to Delta Congressional Representatives Providing Support of Federal Funding for the CALFED Reauthorization Act Levee System Integrity Program.
- 6.** AUTHORIZE staff to Provide Input and Support for Facilitation of a Delta Summit for Local Elected Officials as Proposed by Marci Coglianese at the January 26, 2006 Commission Meeting.
- 7.** Receive Information on Draft Delta-Wide Vision Process and Governance Structure, Including DPC Representation.

8. AUTHORIZE Staff to Provide Input and Support for Facilitation of Delta Summit (follow-up to Summit held June 2005) Initiated by Marci Coglianese and Tom Zuckerman, in Coordination with the University of the Pacific (UOP) and the California Water Education Foundation, Scheduled for June 6-7, 2006 at UOP in Stockton.
9. Receive Information on Proposed Use of (Mitigation) Bank Enabling Instrument (BEI) by the Mitigation Bank Team (Corps of Engineers, U.S. Fish and Wildlife Service, and California Department of Fish and Game) to Streamline the Process for Developing, Reviewing, and Approving Individual Mitigation Bank Proposals.
10. Receive Information on Legislation Relative to the Commission's Role, Projects, and Activities: AB 797 (Wolk), Sacramento-San Joaquin Delta; SB 1556 (Torlakson), The Great California Delta Trail; AB 2901 (Wolk), Mercury Monitoring and Remediation; and AB 1561 (Umberg), Meeting Attendance Requirements for Boards and Commissions.
11. Receive Information from Commission Executive Director.
  - a. General Activities Update
  - b. Correspondence
  - c. Current Projects Tracking

Commissioner Simonsen moved approval of the Consent Calendar; Commissioner Shaffer seconded. The consent calendar was approved unanimously by voice vote.

## **REGULAR AGENDA**

12. **Appoint Commissioners McGowan and Nottoli as Ad Hoc Committee to Represent the Commission in SACOG Discussions Relative to the Legislative Framework for Flood Control and Flood Risk Management in the Sacramento Valley Adopted by SAFCA February 2006.**

Ms. Fiack reported that the Commission received notice that there would be discussions of the SAFCA framework for flood management and that SAFCA adopted a response to the Paterno decision. She said the Legislature understands that local governments will develop a management plan as to how they will address flood issues—which has led SACOG to consider what role they will play. She recommended that Chair McGowan and Commissioner Nottoli continue to participate in the discussions to keep the Commission involved.

Chair McGowan invited all Commissioners who wanted to serve on the Ad Hoc Committee to do so. Dan Siegel cautioned that no more than two members could serve on the Ad Hoc Committee because of Bagley-Keene/Open Meeting Act requirements.

Chair McGowan asked if other Commissioners could serve on the Ad Hoc Committee if he and Commissioner Nottoli were to attend the SAFCA meetings in their capacity as a Board of Supervisor. Mr. Siegel responded that there was no problem in doing so.

Commissioner van Loben Sels moved that Chair McGowan and Commissioner Nottoli be appointed to the Ad Hoc Committee to represent the Commission in SACOG discussion; Commissioner Simonsen seconded. The motion was approved unanimously by voice vote

**13. A. Receive Update on Old Sugar Mill Project Application and Environmental Document Review Process.**

Linda Fiack reported that Yolo County released a new staff report on the Sugar mill Project. She said that previously, the Commission commented on the DEIR, re-circulated DEIR and the FEIR, and all comment letters reiterated the fact that the project was located in the Primary Zone. Ms. Fiack said there would be a meeting of the Planning Commission on March 30, 2006, and if the Planning Commission took action on the staff recommendations, the project could go before the Board of Supervisors on April 25, 2006. She further stated that since the Commission had no change in its position that the project was in the Primary Zone, the Commission would not submit further comments.

Commissioner van Loben Sels asked if the FEIR indicated if Yolo County would have a rezone and change the General Plan for the City of Clarksburg. He asked if the Commission's comment letters responded to those questions. Ms. Fiack responded that the comment letters were written to point out that the project was located in the Primary Zone, and Yolo County reviewed all areas of the Management Plan that were impacted by the project and addressed those points.

Commissioner van Loben Sels also asked if the Commission should respond to the items that were recently released in the staff report. He said he did not want anything to fall through the cracks and felt the Commission should raise the issue that agriculture facilities are need, particularly when the infrastructure already exists.

Ms. Fiack stated that all the comment letters covered all aspects of the Plan and pointed out all policies and recommendations of the plan that applied. She further stated that although Yolo County is still of the position that the project is in the Secondary Zone, the County did address the aspects that were consistent with the Plan.

Commissioner Sanders said the Commission's comments were environmental in nature, and if it wanted to comment again, it should focus on its jurisdictional policy in order to give it a broader basis to examine the project. Mr. Siegel said that the Commission does not need to do anything more.

Commissioner Simonsen asked if any of Yolo County's responses that the Commission disagreed with would be grounds for any one commissioner to appeal rather than the Commission as a whole. Chair McGowan responded that the issue was not if the Commission agreed or disagreed, but whether if it raised a concern on a decision made that is contrary to the previous concern, then the groundwork is layed for filing an appeal.

Commissioner Kelly said that the Commission has run its course for the comment process and it is not feasible to introduce new issues during the EIR/CEQA review process. She said that if Yolo County's responses to the last set of Commission comments are inadequate then the review period of the FEIR would allow for more responses. She further said that the law states that only an aggrieved person can appeal, therefore the Commission cannot appeal to itself.

Mr. Siegel said that the only way that an appeal to itself could happen is if the Commission was dissatisfied with the decision made on a project and the Commission believed it had authority to appeal to itself. He said he would research the statute to see if the Commission had authority to

appeal to itself. He said that if it did, then the Commission's appellate authority states that the Commission would have had to raise its concerns with the local government entity. He went on to say that if the Commission did not raise its concerns with the local entity then it would give up its rights to appeal to itself; however, an aggrieved person could appeal to the Commission.

Ms. Goulart commented that page 8 of the staff report suggested that Yolo County did not take issue with whether the project was in the Primary Zone or not, but whether it constituted development. She said that future letters should address the development issue.

Commissioner Shaffer asked if a Commissioner could identify his/herself as an aggrieved party. Mr. Siegel responded that it would have to be determined if the Commission is a state or an agency thereof, and if any member was appealing individually as an "aggrieved" person.

Ms. Fiack suggested that the Commission craft a response to the Board of Supervisors if it is determined that there are concerns that were not addressed.

- B.** Direct Staff to Send Letter of Comment, on Behalf of the Commission, to Yolo County Planning Commission and Board of Supervisors, if Timing is Appropriate, to Reiterate Previous Comments Provided if not addressed in Final Environmental Document.

#### **14. Receive Briefing on Conflict of Interest Policy from Commission Counsel.**

Dan Siegel reported that he reviewed the issue as to whether a member of the County Board of Supervisors could act as a member of the Board of Supervisor regarding a project and review that project as a Commissioner on appeal. He said that a member of the Board of Supervisors could do so as long as that Supervisor acts properly, without discriminatory bias, and keeps an open mind, or financial interest is appropriate.

#### **15. Summary of Process for Appeal to the Commission from Commission Counsel**

Dan Siegel reported that under the Commission's regulatory provisions, an appeal may be filed by any person who is aggrieved by a local government or other local agency implementing the resource management plan on the grounds that an action, as to land located exclusively within the Primary Zone, is inconsistent with the Resource Management Plan. Mr. Siegel said that an appeal must be filed with the Commission within 10 calendar days of a local government's final action and the effect of the appeal would stay a local action. He said a hearing process is a two step process with the first hearing on jurisdictional issues and the second hearing to review any merits of the outcomes of the first hearing. Additionally, local government has 60 days to go to court on a Commission decision. He further stated that a decision on appeal has to be based on written communication and not ex parte communication. He distributed a handout which is available on the Commission's website.

Commissioner Shaffer asked what constituted a "final action" and when during the process would an aggrieved person come before the Commission to appeal. Mr. Siegel responded that a final action is constituted when a decision is made by the Board of Supervisors—not the Planning Commission. He further stated that if there are multiple actions on a project, there could be the potential for multiple appeals and appeals must be filed on each action or that action is stayed.

Commissioner Calone asked if a decision issued by the Commission on an appeal is final. Mr. Siegel responded that it is not final. He went on to say that the Commission could either approve the governmental action (in which case a party can file an appeal with the Courts); or the Commission can reject the local government's action which is then returned to the local government for review and re-submittal to the Commission. However, until the Commission approves the action, it cannot go forward.

**16. A. Receive and Discuss Information from Visioning/Strategic Planning Sessions**

Patrick Bell presented the Commission with a draft of the outcomes of the previous Visioning session. The document outlined the overview of threats, vision, mission, strategies and workplan. Mr. Bell asked that the Commissioners peruse the document and provide feedback.

Commissioner van Loben Sels said he agreed that the Commission's main function is to preserve agriculture, habitat, and recreation and to provide flood protection; however he disagreed that the Commission should provide water conveyance for 23 million consumers. He said he saw that topic as a true threat. Mr. Bell said he would remove the item. Commissioner van Loben Sels also commented that water quality should be added under the topic under vision where it is described that the Delta would have to meet the needs of water users for recreation and habitat preservation.

Commissioner Kelly said she was concerned that the Commission might become too rigid in its interpretation of its directive and would not be resilient enough to respond to the evolving Delta-wide vision taking place between other agencies. She went on to say she was concerned as to how DPC would position itself in viewing its mission in light of the comprehensive Delta-wide vision. She recommended that the vision be reworked into a statement about the Commission's vision and incorporate flood protection into program strategy.

Commissioner Sanders commented that the vision is somewhat misdirected because it does not embody the Commission. He suggested that the document be redefined for the organization versus the Delta, and also suggested that the document reflect any actions of the Commission to counter threats.

Chair McGowan said that the Commission should acknowledge that the Delta is a conveyance system for Southern California; however, its focus should be that the other values of the Delta are not lost at the expense of that conveyance.

Robert Goulart commented that she agreed with Commissioner Sanders. She said the Commission should be careful and think about if it wants to deal with water as part of its directives. She said that like Commissioner van Loben Sels, she was uncomfortable with the item that stated the Delta should provide water conveyance for 23 million consumers. She further said that the vision would need to be fleshed out more. She said there should be more specifics under the topic of strategy.

Commissioner Scriven suggested that the protection and mitigation of impacts of water exports or levee island conversion to alternate uses should be added in order to mitigate influences that will and have happened.

Commissioner Wilson commented that the Commission should not retreat from the water issue because there are broad, specific threats which cannot be ignored.

Commissioner Calone stated that he favored the comments made by Mr. Smith and the Delta Alliance. He said the Commission should take some more time on the Visioning to digest and maybe incorporate some of the ideas of the Delta Alliance.

Ms. Fiack said she reworked the vision to read: *a working landscape of Delta agriculture, habitat, recreation and water resources sustained and enhanced utilizing adaptive best management practices*. Commissioner Sanders indicated that because the workplan will be based on a five year period, that the date should be changed from 2011 to 2030.

Commissioner Kelly made a substitute motion to adopt the Mission and Vision as prepared by Ms. Fiack; Commissioner van Loben Sels seconded. The motion was not approved.

It was moved by Commissioner Beckman to rework the Vision and Mission statement to read: the Delta is in 2030 is a dynamic and living system, and retain the Mission statement as is; Commissioner Reagan seconded the motion with an amendment to add measurements of success. The motion was approved by voice vote; Commissioners Kelly, Shaffer, van Loben Sels and Scriven opposed.

Mr. Bell said he would take into account all of the suggestions and return with a refined document.

**B. DIRECT STAFF to Refine Recommended Vision Statement, Mission Statement, and Priorities Work Plan, Pursuant to Commission Member Input, and Return for Recommended Commission Adoption on May 25, 2006**

**17. Commissioner Comments/Announcements**

There were no announcements.

**18. Adjourn**

The meeting was adjourned at 9:15 p.m.